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### Some Reflections On Recent Changes in Turkey's Penal Code

by Thomas Goltz

The recent flood of Kurdish refugees out of and then back into Iraq has brought the attention of the world on the fate the Kurds.

But while the future of Kurdish rights in Iraq is fully in the public eye, remarkably little attention has been devoted to the subject of the Kurds in neighboring Turkey--where the majority of the world's estimated 30 million Kurds live.

And in Turkey, profound changes are the word of the day, albeit disguised beneath the legalese of new amendments to the constitution.

To an outsider, the aggressively entitled Law on Combatting Terrorism would not appear to have anything to do with the Kurds at all, but only represent a hodge-podge penalties for various security-related crimes. The word "Kurd", for example, is found nowhere in it.

But the new bill, passed into law on April 12th, 1991 is significant primarily for what it does not say--for it has replaced a series of articles in the 1982 constitution which pertained to 'thought crimes'.

Dating back to Turkey's first constitution (largely inspired by the basic laws of fascist Italy) thought crime in the most recent edition of the Turkish constitution was covered in Articles 141 and 142, which banned communist thought, word and deed. Related articles popular with political prosecutors included Article 146, or trying to overthrow the constitution; Article 125, or challenging the territorial integrity of the state; Article 140, or Defaming Turkey from Abroad and the strange, logic-twisting Law 2939, which effectively made speaking Kurdish a crime by banning all languages in Turkey other than those used as the primary language of a state with which the Republic has diplomatic relations. Also thrown out of the old constitution was Article 163, or attempting to set up a state based on religion. With the exception this last, all of the old laws were used to suppress Kurdish national feeling.

The result is that at least on paper, Turkey has taken a major step in overcoming political and social taboos. And yet, despite the apparent progressiveness of much of the legislation, there is deep concern in certain circles that rather than representing a real step down the path of democratic-pluralism, the constitutional reforms are simply a means of beguiling the population into believing themselves more free, while allowing even more power to be consolidated in the hands of the state.

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Few would disagree that the Turkish constitution of 1982 was inadequate in many ways. Drafted under the watchful eyes of the martial law regime following the 1980 military coup, the document contained much that would be regarded as an affront to human dignity, but was passed by some 93 percent of the popular vote in a referendum that no-one has ever seriously challenged. This suggests, perhaps, the very pro law-and-order sentiment prevalent among most Turks at the time, who felt relieved that someone was able to put an end to the country's bloody political cul de sac of the late 1970s--even if by means of an army coup.

But times change, and as the martial law command was gradually replaced by civilian authority, elements of the military-designed constitution were increasingly called into question. Although it proceeded by fits and starts, the process might be said to have reached its penultimate point with the election, by parliament, of then Prime Minister Turgut Ozal to the presidency in 1989. In so doing, Ozal became the first civilian president of Turkey since the 1950s, and the first such civilian with any real authority.

On the day of his inauguration in Ankara, Ozal set the tone for revising those elements of the constitution he found questionable, promising to protect and enhance three basic freedoms he thought essential for the further development of Turkey: Freedom of Endeavor, Freedom of Belief, and Freedom of Thought.

What he meant by the first is relatively straightforward: the removal of the state, to the extent possible, from the national economy--a promise that has essentially been kept. The rationale behind this, he says, is that without economic freedom, a people cannot be democratic and vice-versa. It might sound trite and superficial, he pointed out, but a major reason for the succession of coups and dictatorships in the developing world is the lack of a free market economy, and the related constraints on political thought.

By the second pillar, or Freedom of Conscience, Ozal meant religion, or the lifting of constraints imposed by the state upon believers. An example is the de-banning of women's head-scarfs in public institutions like schools and universities. To dyed-in-the-wool secularists of the Ataturkian tradition, this means allowing fundamentalism and obscurantism to re-inform the body politic; to Ozal and those who share his views, it is to recognize Islam as a fact of life in Turkey. Not only will Islam not just go away, but it may well serve as the basis for the moral, modern, Muslim society Turkey has been searching for since the 1920s.

The third pillar, or Freedom of Thought, may seem redundant about the ability to think and thus believe what one will, but in Turkey, the notion has a different connotation. Here, it addresses itself not only to issues like the ability to believe in communism and socialism or religion, but also to believe in an identity beyond the narrow nationalism imposed by Ataturk--namely, the freedom to be oneself, even if that self is identified as being a Kurd.

And it is this last point which has received particular criticism, not only from the right--who fear the unitary state established by Ataturk to be threatened--but by the left, who feel that Ozal has outmaneuvered them on a pressing moral issue. Still others accuse the President of having manipulated the issue in a sinister way, delivering all the accoutrements of ethnic freedom, but with none of the substance.

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And there would seem to be grounds for concern. Although Ozal has been very specific in his pronouncements on the issue, declaring that he has lifted the taboo on "native languages" (IE: Kurdish), and although there has been a sudden effervescence in Kurdish culture in the way of music cassettes and even epic poems, the Law for Combatting Terrorism actually increases penalties for using Kurdish in public gatherings (like a political rally) from one year to five years. There may be a significant gap between 'official' and 'real' Turkey, but even laws that are unenforced today may well be enforced tomorrow, legal experts say.

More in keeping with the name and spirit of the law are the very heavy penalties imposed on those found guilty of terrorism in the future. Jail terms have been increased by more than 50% for those convicted of terrorist activity, with convicts to be incarcerated in special penitentiaries designed as much for solitary confinement as for keeping in line with 'European standards.'

Extreme critics even suggest that the release of tens of thousands of inmates from the nation's prisons--an important emotional part of the Law for Combating Terrorism--was actually designed to allow the authorities greater control over future inmates: massive prison-yard demonstrations and hunger strikes prevented a redistribution of prisoners the last time the government attempted to create a special institution for political crimes. Now the task of isolating new inmates will be facilitated by the fact that there will be so few others "inside" to express solidarity. Even the recent release is criticized, because rather than describing the event as an amnesty righting the wrongs of the past, Ozal termed it a "conditional release", thus in no-wise suggesting that the government had made an error in jailing the released prisoners in the first place.

Still, the numbers were impressive: Of the 46,000 prisoners in Turkey's 649 maximum and minimum security prisons and reform schools for crimes committed prior to April 4th 1991, and for those still on trial, 19,664 were released by April 28th, with the total number of released prisoners expected to reach 42,000 within six months.

Of those released in the first few weeks of the law, 17,469 were sentenced as common criminals, while another 1,146 were being detained on those charges; Another 1,048 were sentenced for specific political crimes (anarchy and terrorism), including more than two score on 'thought crime charges': 50 were released after violating Article 141; 32 for violating Article 142 and five for violating Article 163.

Only one prisoner--former Diyarbakir Mayor Mehdi Zana--was in prison for violating Law 2932 due to his insistence on speaking Kurdish in court while on trial for other charges which were subsequently dropped.

The means of effecting this massive release from detention was the one-time reduction of prison terms. Those individuals imprisoned for or charged with common crimes prior to the April 4th cut-off date are now to be released after 1/5 of their terms; lifers after serving eight years; death-row inmates after serving ten years. The question asked by many, though, is whether there is a bias in favor of convicted murderers and drug dealers and against political prisoners, and specifically against those of the leftist or separatist persuasion: most of this generic group of prisoners were charged under Articles 125, 141, 142 and/or 146 for which the terms of sentence reduction are quite different from the terms mentioned above for common criminals: release after serving 1/3 of the

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sentence if inside for a set period of time, release after 15 years if in for life or release after 20 years if sentenced to capital punishment. Most right-wing political prisoners, in contrast, were charged according to Article 336, which effectively reduced their crimes of political violence and murder to common, every-day violence and murder--and thus made them susceptible to the more lenient terms.

This alleged slant is reflected in the fate of the inmates on death row at the time of the conditional release (no one has been executed since 1984). According to the unabashedly leftist magazine 2000'a Doğru, of the 275 inmates awaiting execution, 197 are leftwing/separatist, 23 are right-wing, 54 are common and four are Palestinians (convicted on charges of international political murder). Of the leftists, only eight will be or have been released after having served the minimum 10 years required of "non-political" death row inmates, the rest having to wait an additional nine years to complete the requisite 20 years needed for those convicted on political charges. The 23 rightist, meanwhile, have been or are to be released as soon as they have served 10 years, along with all the common criminals awaiting execution.

More ominous still, the law is very vague on the definition of what constitutes a terrorist act, and precision in defining a crime, any jurist will tell you, is the essence of a law.

As an example, in addition to armed acts of violence against the state by separatists, the new law leaves open the question of the guilt of peripheral collaborators. Journalists who report on the on-going guerrilla war in the southeast and disclose names of informers or officials involved in the conflict might well fit this amorphous category, as would publishers who run articles contrary to perceived government interest. This would seem to be a direct contradiction to the governmental claim that 'thought crimes' have been abolished.

The law is also weak in terms of preventing abuses like police torture. Formerly, a prosecutor could (and did) demand the removal of a policeman or other security person from his or her office while an investigation was <sup>BEING</sup> mounted, whereas the new law allows a suspected torturer to stay on the job until after conviction.

Ozal defends the more draconian aspects of the new law by saying that it is only directed at 'those who have no respect for the basic rights and freedoms (of others) and who wish by force and violence to change the parliamentary democratic system,' and that the obsessive concern in some circles for the vagueness of the law is exaggerated.

"I don't think there is much to say regarding this issue," he said, "Democracies must protect the basis for their legitimacy against those who use force, and therefor make legal arrangements to do so. The new law is in no way different than that seen in western countries."

As for the relative comforts the new law presents, Ozal choses to reflect on the situation of the United States in the 1950s, at the height of the ultra-democracy McCarthy witch-hunts and segregation in the South. However shameful most Americans regard that period in their history, it is also one that falls under the general rubric 'Democracy in America'. And it is according to that developing, imperfect sense of democratic-pluralism that Ozal wants his Turkey to be judged.

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